

Citizens I Fidelity Bank & Trust Company

CITIZENS PLAZA · POST OFFICE BOX 33000 · LOUISVILLE, KENTUCKY 40232

June 4, 1979

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Secretary, Interstate Commerce Commission Washington, D.C. 20423

Dear Sir:

Attached is the original and enclosed are four additional executed counterparts of a mortgage and security agreement, , 1979, on certain railroad rolling June 5 stock made between the following parties, and covering the equipment identified below:

Mortgagor:

Oneida & Western Transportation

Company

300 Forest Park Boulevard Knoxville, Tennessee 37919

Mortgagee:

Citizens Fidelity Bank and

Trust Company P. O. Box 33000

Louisville, Kentucky 40232

Attn: Citizens Fidelity

Energy Co.

Equipment Covered By the Agreement:

One hundred and fifty four (154) 105 Ton Rotary Dump Bathtub Type Gondola Cars, manufactured by Whittaker Corporation, Berwick Forge and Fabricating Division, Berwick, (i) AAR Mechanical Pa. with: Designation GTS; (ii) AAR Car Type Code El00; Road Initials and Numbers OWTX99001 -OWTX99154 (all inclusive); (iv) Steel Stencil Numbers one

FEE OPER MAP

INTERSTATE COMMERCE COMMISSION

Secretary, Interstate Commerce Commission June 4, 1979 Page 2

through one hundred fifty four (1-154) (all inclusive); and (v) as it is intended that these cars will be subjected to an equipment trust, all are legended with the following: "TITLE TO THIS CAR IS VESTED IN CITIZENS FIDELITY BANK AND TRUST COMPANY, LOUISVILLE, KY., AS TRUSTEE UNDER AN EQUIPMENT TRUST AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."

I respectfully request that the original of this document be recorded under the provisions of 49 U.S.C.A. §11303 (1979) (formerly Section 20c of the Interstate Commerce Act). I would also appreciate your receipting four of the counterparts by both date stamp and letter and returning them, along with the original, to Citizens Fidelity Bank and Trust Company (Mortgagee) at the above address.

The undersigned certifies that he is an officer of the Mortgagee and that he has knowledge of the matters set forth in the enclosed mortgage.

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C. Howard Capito

Assistant Vice President

CHC/mfh

MORTGAGE AND SECURITY AGREEMENT JUN 7 1979 -2 15 PW

This Mortgage and Security Agreement is made and emetal into this 5th day of June , 1979, by and between (i) ONEIDA & WESTERN TRANSPORTATION COMPANY ("Oneida"), a Tennessee partnership, and (ii) CITIZENS FIDELITY BANK AND TRUST COMPANY ("Bank"), a Kentucky banking corporation with principal office and place of business in Louisville, Kentucky.

AND THE PERSON NAMED IN

IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

1. For good and sufficient value received, Oneida hereby pledges, mortgages, assigns, transfers and grants a security interest in the following collateral (the "Collateral") to the Bank, to-wit:

One hundred and fifty four (154) 105 Ton Rotary Dump Bathtub Type Gondola Cars, manufactured by Whittaker Corporation, Berwick Forge and Fabricating Division, Berwick, Pa. with: (i) AAR Mechanical Designation GTS; (ii) AAR Car Type Code El00; Road Initials and Numbers OWTX99001 -OWTX99154 (all inclusive); (iv) Steel Stencil Numbers one through one hundred fifty four (1-154) (all inclusive); and (v) as it is intended that these cars will be subjected to an equipment trust, all are legended with the following: "TITLE TO THIS CAR IS VESTED IN CITIZENS FIDELITY BANK AND TRUST COMPANY, LOUISVILLE, KY., AS TRUSTEE UNDER AN EQUIPMENT TRUST AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."

2. This Mortgage and Security Agreement is made and given by Oneida in order to afford security to the Bank for the payment in full by Oneida of (i) that promissory note (the "Note") of even date herewith from Oneida to the Bank in the original face principal amount of Five Million Dollars (\$5,000,000.00), which Note bears interest at the rate of twenty five hundredths percent (.25%) per annum, in excess of the "Prime Rate," as defined in the Note, charged by Bank from time to time in effect after the date of the Note, and (ii) all other indebtedness, obligations and liabilities of whatever

kind of Oneida to the Bank, whether created directly or acquired by the Bank by assignment or otherwise, whether now existing or hereafter created or arising, absolute or contingent, joint or several, due or to become due, including but not limited to, all future loans and advances made by the Bank to Oneida.

- 3. Oneida hereby warrants and represents to the Bank that:
- (a) Oneida is a duly organized and validly existing partnership, in good standing, under the laws of Tennessee and is duly qualified to transact business in all other jurisdictions where its business and applicable law so require.
- (b) Oneida has or will acquire absolute title to the Collateral free and clear of all liens, encumbrances and security interests except the security interest given to the Bank by this Mortgage and Security Agreement.
- (c) Oneida has the right and power to obtain and obligate itself on the loan represented by the Note and to enter into this Mortgage and Security Agreement; and the execution and delivery of the Note and this instrument do not violate any provision of the Partnership Agreement of Oneida, or any term or condition of any contract or agreement to which Oneida is a party.
- (d) The acquisition of the Collateral, the loan evidenced by the Note and the execution and delivery of this instrument have all been duly and fully authorized by any and all necessary parties, and the Note and this instrument when duly executed and delivered will both constitute valid, binding and enforceable obligations of Oneida, and the partner executing the Note and this instrument on behalf of Oneida has been fully and properly authorized to do so.
- 4. Oneida hereby covenants and agrees with the Bank that Oneida will:
- (a) If the Collateral is used in, leased in, or its use is permitted in Canada (or any province or territory thereof) or in Mexico (or any state or the Federal District thereof), take all necessary action to protect the right, title and interest of the Bank in the Collateral and will furnish the Bank with an opinion of Canadian or Mexican counsel, as the case may be, satisfactory to the Bank to the effect that the action taken by Oneida is all that is necessary to protect the right, title and interest of the Bank in the Collateral.

- (b) Defend and protect the Collateral against all adverse claims and demands, and promptly notify the Bank in writing of any such claim or demand asserted against any of the Collateral.
- (c) Mark each car forming part of the Collateral appropriately to show Oneida's ownership and with its assigned reporting mark and number in accordance with the rules and regulations of the American Association of Railroads (A.A.R.), and Oneida will maintain and cause the Collateral to be always so marked while this instrument remains in effect and will not, during such period, cause or allow the Collateral to be marked so as to indicate ownership in any other party or to be renumbered without the prior written consent of the Bank, nor will Oneida allow any of the Collateral to be marked so as to indicate a lien thereon allegedly held by any party other than the Bank.
- (d) Maintain the Collateral or cause the same to be maintained in good and proper working order throughout the period this instrument remains in effect, and the Collateral shall not be used for any purpose other than normal rail transportation of coal without the prior written consent of the Bank.
- (e) Permit the Bank and its agents to inspect the Collateral and the books and records of Oneida regarding same at any reasonable time, and from time to time, and will at all times keep track of the location of each piece of the Collateral and will promptly on request by the Bank furnish same a statement setting forth the location and condition of each car forming part of the Collateral.
- (f) Pay all taxes and other governmental assessments, charges and impositions levied upon the Collateral on or before the respective due dates therefor and prior to the attachment to the Collateral of any penalties or interest for late payment. The Bank shall have the right to demand proof of the timely payment of all such taxes and governmental charges and shall have the right, on the failure of Oneida to so pay same, to pay all such taxes and governmental charges itself on behalf of Oneida and Oneida shall reimburse the Bank therefor, together with interest on the amounts so paid by the Bank at the rate of one percent (1%) per annum in excess of the applicable interest rate set forth above, promptly upon demand by the Bank.
- (g) Pay the Note, and all installments of principal and interest thereunder, and all other amounts owed by Oneida to the Bank hereunder and otherwise, in full when, as and how due.

- (h) Pay and reimburse the Bank for the expenses, including attorneys' fees, incurred in the preparation of this Mortgage and Security Agreement and other documents pertaining to this transaction, and for the cost of all recording and filing deemed necessary by Bank to perfect its lien on the Collateral.
- (i) Promptly notify the Bank in writing in the event any of the cars forming the Collateral are substantially damaged or destroyed as a result of any accident, calamity or other occurrence, and will assign and pay to the Bank any compensation as a result of such damage or destruction of the Collateral received under the American Association of Railroads Mechanical Interchange Rules, under any insurance policy or otherwise.
- 5. Oneida hereby covenants and agrees with the Bank that Oneida will not:
- (a) Permit any other chattel mortgages, security interests, liens or other encumbrances to attach to any of the Collateral;
- (b) Permit any of the Collateral to be seized, attached or levied upon under any legal process;
- (c) Sell, exchange, transfer or otherwise dispose of any of the Collateral, without the prior written consent of the Bank;
- (d) Permit or suffer anything to be done, excluding normal use of the Collateral, that may in any way impair the value of any of the Collateral or the security intended to be afforded by this Mortgage and Security Agreement.
- (e) Use, permit use, or lease for use any of the Collateral predominately outside the United States of America within the meaning of section 48(a) of the Internal Revenue Code of 1954 (the "Code"), as amended to the date of this Mortgage and Security Agreement or permit the use of the Collateral by any person in whose hands the Collateral would not qualify as "section 38 property" within the meaning of the Code.
- 6. Oneida will at all times maintain or cause to be maintained, at its own expense, property and casualty insurance in respect of the Collateral at the time subject hereto, at least in amounts and against risks customarily insured against by railroad companies on similar equipment owned by them; provided, however, that, subject to availability, the amount of such coverage shall not, at any time, be less than Five Million Six Hundred Thousand

 Dollars

(\$5,600,000.00) (with a deductible of not greater than Fifty Thousand Dollars (\$50,000.00)) per occurrence. The proceeds of such insurance shall be payable to the Bank and Oneida, as their respective interests may appear.

Oneida will, at all times, at its own expense, carry and maintain or cause to be carried and maintained public liability insurance, naming the Bank as an additional named insured, at least in amounts and against risks customarily insured against by railroad companies on similar equipment owned by them; provided, however, that, subject to availability, the amount of such coverage shall not, at any time, be less than Five Million
Dollars (\$5,000,000.00) (with a deductible of not greater than Twenty Five Thousand
(\$25,000.00)) per occurrence. Any policy of insurance carried in accordance with this section shall not provide for any payment of premiums or commissions by the Bank.

Oneida shall obtain from each insurer under the two paragraphs immediately above an agreement, by endorsement or separate instrument, that such insurer will give the Bank thirty (30) days' written notice before such insurer's policy shall be materially altered or cancelled or not renewed. On or prior to the delivery and acceptance of any Collateral hereunder, and in January of each year, Oneida shall deliver to the Bank a certificate of insurance by or on behalf of each insurer stating the coverage, named insureds and limits of each such policy.

- 7. Oneida shall not, while the Note remains outstanding and this Mortgage and Security Agreement remains in effect, dissolve or sell substantially all of its assets, without the prior written consent of the Bank, which shall not be arbitrarily withheld providing the Bank is adequately assured and satisfied that its position with regard hereto will remain secure, it will receive full payment of the Note and all other amounts owed by Oneida, and its lien on the Collateral will not be impaired.
- 8. (a) Each of the following shall constitute and be deemed an "Event and Default" hereunder:
- (i) Oneida shall fail to pay in full any installment of principal and/or interest, or any other amount, due under the Note at the time and in the manner due under the terms of the Note and shall further fail to cure such default within five (5) days of written notice thereof from the Bank;

- (ii) Oneida shall fail to comply fully with any of the provisions of this Mortgage and Security Agreement, or any of the warranties and representations made by Oneida herein or if any other document pertaining to this financing and delivered to the Bank shall prove untrue or misleading, and such default is not cured to the satisfaction of the Bank within twenty (20) days of written notice thereof from the Bank to Oneida.
- (iii) Oneida shall default under the terms of any other indebtedness owed by it to the Bank, or its successor as holder of the Note, whether now existing or hereafter arising or acquired; and
- (iv) Oneida is adjudicated as bankrupt or insolvent, or files a voluntary petition in bankruptcy or a petition seeking reorganization or an arrangement with creditors, or requests or suffers the appointment of a trustee, receiver or liquidator for all or a substantial part of its business or assets, or makes a general assignment for the benefit of creditors, or takes advantage of any statute or law, Federal or state, pertaining to relief for debtors.
- (b) Upon the occurrence of any Event of Default as defined in §8(a) above, the Bank may, at its option and without further notice, declare the entire unpaid principal balance of, and all accrued interest on, the Note, plus all other indebtedness and obligations of either or both of the makers thereof to the Bank, to be immediately due and payable in full and proceed to forthwith realize upon the Collateral and all other security for the Note and such indebtedness. On the occurrence of an Event of Default, the Bank shall have all of the rights and remedies in and against the Collateral and otherwise available under Federal law and to a secured party under the Uniform Commercial Code as adopted in Kentucky and all other applicable laws, in addition to all rights and remedies provided herein and in the Note, all of which rights and remedies shall be cumulative to the fullest extent permitted by law. Following an Event of Default, the Bank shall have the right to require Oneida, at the latter's expense, to assemble the Collateral and make it available to the Bank at such rail points as are feasible and designated by the Bank, and the Bank may immobilize and keep from use all or any part of the Collateral, with or without proceeding to sell the Collateral or any part thereof, and shall also have the right to lease all or part of the Collateral to other parties with or without taking possession The Bank shall have the right at its discretion to thereof. sell the Collateral at public or private sale(s) in one or more lots. Oneida will on demand by the Bank pay, as part of the indebtedness and obligations hereby secured, all

amounts, including but not limited to attorneys' fees, permitted by law, with interest on all such amounts paid by the Bank at the rate of one percent (1%) per annum in excess of the applicable rate set forth above, incurred or paid by the Bank as expenses in taking possession of, preserving and disposing of the Collateral, including any taxes, insurance and maintenance costs incurred during such proceedings. requirement of reasonable notice of time and place of disposition of the Collateral by the Bank shall be conclusively met if such Notice is mailed, postage prepaid, to Oneida's last address as furnished to the Bank at least fifteen (15) days before the sale or disposition. The Bank may bid upon and purchase any or all of the Collateral at any public sale The Bank may dispose of all or any part of the Collateral in one or more lots and at one or more times and from time to time, and upon such terms and conditions, including a credit sale, as the Bank determines in its sole The Bank may apply the net proceeds of any such discretion. disposition of Collateral or part thereof, after deducting all costs incurred in connection therewith, including the Bank's attorneys' fees and expenses incidental to preparing for sale and sale of the Collateral, and with interest thereon at the rate specified above, in such order as the Bank may elect, to the indebtedness of Oneida secured hereunder, including but not limited to the Note, and any remaining proceeds, after all such indebtedness and other amounts due hereunder are satisfied in full, shall be paid to Oneida or other party legally entitled thereto.

- 9. This Mortgage and Security Agreement shall extend to and include, and Oneida hereby grants the Bank a security interest in, any proceeds and products of the Collateral and specifically in all per diem, mileage and other fees payable by third parties with regard to the Collateral and any rental or income derived from leasing any of the Collateral. At the request of the Bank, Oneida will furnish the Bank complete information as to the foregoing items and the Bank shall have the right to require that all payments of such items be made directly to the Bank to be credited against the indebtedness hereby secured, and the Bank may advise the parties owing such payments of its rights under this instrument and direct such parties to make their payments to the Bank.
- 10. Oneida consents to the filing of this Mortgage and Security Agreement with the Interstate Commerce Commission in order to perfect the Bank's lien on the Collateral under the provisions of 49 U.S.C.A. §11303 (1979) (formerly Section 20c of the Interstate Commerce Act). Oneida shall pursuant to §4(h) hereof pay and reimburse the Bank for all fees and charges incurred or necessary for such filing and recording.

- 11. (a) Time shall be of the essence in the performance by Oneida of all its covenants, obligations and agreements hereunder.
- (b) This instrument and the agreement evidenced hereby shall, to the extent Federal law is not applicable, be governed and construed in accordance with the laws of the Commonwealth of Kentucky.
- (c) This Mortgage and Security Agreement shall be binding upon Oneida and its successors and assigns and shall inure to the benefit of the Bank and its successors and assigns. The Bank, without the consent of Oneida may assign the Note and its rights under this Mortgage and Security Agreement, in which event the Bank's assignee shall succeed to all of the rights of the Bank under the Note and hereunder.

IN TESTIMONY WHEREOF, the parties hereto have each caused this Mortgage and Security Agreement to be duly executed on their behalf by their undersigned, properly authorized officers, this day and year first above set forth.

ONEIDA & WESTERN TRANSPORTATION COMPANY
By: Blushaupson
General Parther CITIZENS FIDELITY BANK AND
TRUST COMPANY
Title: AVA
("Bank")

COUNTY OF Knoy) SS:

On this 5th day of Quine, 1979, before me personally appeared B. Ray Thompson 91.

to me known to be a general partner of Oneida & Western Transportation Company (a party to this agreement) who

executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

My commission expires: /-/9-8/

COUNTY OF JEHERSON

On this day of Jone, 1979, before me personally appeared C. Howard Capito to me personally known, who being by me duly sworn, says that he is the Host Vice Product of Citizens Fidelity Bank and Trust Company, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

My commission expires Post Proposition Pro

I certify that I prepared the foregoing instrument:

Edward B. Weinberg

GREENEBAUM DOLL & McDONALD 3300 First National Tower Louisville, Kentucky 40202

Interstate Commerce Commission Washington, D.C. 20423

OFFICE OF THE SECRETARY

C. Howard Capito
Assistant Vice President
Citizens Fidelity Bank & Trust Company
Citizens Plaza
P.O.Box 33000
Louisville, Kentucky 40232
Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C.

11303, on 6/7/79 at 2:15pm , and assigned recordation number(s). 10460

ncerely yours

Enclosure(s)